

#### **401 KAR 51:220. CAIR NOx ozone season trading program.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. 51.121, 51.122, 72.2, 75.1, 75.2, 75.4, 75.11-75.13, 75.17, 75.19, 75.20, 75.24, 75.70, 75.72, 75.74, 75.75, Part 96, 42 U.S.C. 7410

STATUTORY AUTHORITY: KRS 224.10-100(5), 42 U.S.C. 7410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for the control of nitrogen oxides (NOx) emissions from large boilers and turbines used in power plants and other industrial applications, pursuant to the federal mandate published under the Clean Air Interstate Rule (CAIR), 40 C.F.R. 96.301 to 96.388. This administrative regulation is not more stringent than the provisions allowed under the federal mandate.

Section 1. Applicability. This administrative regulation shall apply to:

- (1) CAIR NOx Ozone Season units in Kentucky subject to 40 C.F.R. 96.304;
- (2) A new or existing industrial boiler or turbine; or
- (3) A new or existing electric generating unit including a fossil fuel-fired boiler, combustion turbine, or combined cycle system:
  - (a) Serving a generator with a nameplate capacity greater than twenty-five (25) megawatts of electricity; and
  - (b) Offering some electricity for sale.

Section 2. Compliance Requirements. CAIR NOx Ozone Season units shall comply with the following requirements:

- (1) 40 C.F.R. 96.301 to 96.308 (Subpart AAAA), "CAIR NOx Ozone Season Trading Program General Provisions";
- (2) 40 C.F.R. 96.310 to 96.315 (Subpart BBBB), "CAIR Designated Representative for CAIR NOx Ozone Season Sources";
- (3) 40 C.F.R. 96.320 to 96.324 (Subpart CCCC), "Permits";
- (4) 40 C.F.R. 96.350 to 96.357 (Subpart FFFF), "CAIR NOx Ozone Season Allowance Tracking System";
- (5) 40 C.F.R. 96.360 to 96.362 (Subpart GGGG), "CAIR NOx Ozone Season Allowance Transfers";
- (6) 40 C.F.R. 96.370 to 96.375 (Subpart HHHH), "Monitoring and Reporting"; and
- (7) 40 C.F.R. 96.380 to 96.388 (Subpart IIII), "CAIR NOx Ozone Season Opt-in Units".

Section 3. Methodology for the Allocation of CAIR NOx Ozone Season Allowances. The number of CAIR NOx Ozone Season allowances to be allocated to each CAIR NOx Ozone Season unit by the cabinet and to be sold by the Commonwealth of Kentucky shall be determined pursuant to this section.

- (1) The total number of CAIR NOx Ozone Season allowances shall be as follows:
  - (a) For the 2009 through 2014 control periods, 36,109 tons, which includes 36,045 tons as specified in 40 C.F.R. 96.340, and sixty-four (64) allowances previously allocated under 401 KAR 51:160 for units specified in Section 1(2) of this administrative regulation; and
  - (b) For the 2015 control periods and thereafter, 30,651 tons, which includes 30,587 tons as specified in 40 C.F.R. 96.340 and sixty-four (64) allowances previously allocated under 401 KAR 51:160 for units specified in Section 1(2) of this administrative regulation.
- (2) The total number of CAIR NOx Ozone Season allowances assigned to Kentucky shall be

divided into separate pools as follows:

(a) Ninety-eight (98) percent of the total number of allowances shall be allocated for each control period to units that commence operation or commence commercial operation before:

1. January 1, 2006, for the control periods 2009, 2010, 2011, 2012, 2013, and 2014;
2. January 1, 2009, for the 2015 control period; and
3. Thereafter, before January 1 of the year that is six (6) years before the next control period; and

(b) Two (2) percent of the total number of allowances for each control period shall be sold by the Commonwealth of Kentucky in accordance with Section 4 of this administrative regulation.

(3) For each CAIR NOx Ozone Season unit, the baseline heat input or adjusted control period heat input in mmBtu shall be determined and shall be used to determine CAIR NOx Ozone Season allowances for the pool specified in subsection (2) of this section as follows:

(a) For CAIR NOx Ozone Season units commencing operation or commencing commercial operation before January 1, 2001, and:

1. Operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for 2001 through 2005; or

2. For units not having operated each calendar year for a period of five (5) or more consecutive years, the baseline heat input shall be established during the next allocation period after the unit has five (5) consecutive years of operation, using the average of the three (3) highest amounts of the unit's adjusted control period heat input for the most recent five (5) consecutive years of operation;

(b) For CAIR NOx Ozone Season units commencing operation or commencing commercial operation on or after January 1, 2001, and operating each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input over the most recent consecutive five (5) years of operation; or

(c) For CAIR NOx Ozone Season units that have not operated each calendar year during a period of five (5) or more consecutive years, the baseline heat input shall not be established. For purposes of allocations, the heat input shall be the average of the three (3) highest amounts of the unit's adjusted control period heat input for the previous five (5) years of operation, the:

1. Adjusted control period heat input for a control period of not operating shall equal zero; and

2. Cabinet shall allocate CAIR NOx Ozone Season allowances for the unit.

(4) The adjusted control period heat input for each ozone season shall be calculated for CAIR NOx Ozone Season units specified in subsection (2)(a) of this section as follows:

(a) If the unit is coal-fired during the year, the unit's control period heat input for that year shall be multiplied by 100 percent;

(b) If the unit is oil-fired during the year, the unit's control period heat input for that year shall be multiplied by sixty (60) percent; and

(c) If the unit is not subject to paragraphs (a) or (b) of this subsection, the unit's control period heat input for that year shall be multiplied by forty (40) percent.

(5) The adjusted control period heat input for CAIR NOx Ozone Season units specified in subsection (2)(b) of this section shall equal the unit's control period heat input multiplied by 100 percent.

(6) For an ozone season, the unit's control period heat input and the unit's status as coal-fired or oil-fired shall be determined:

- (a) In accordance with 40 C.F.R. Part 75, if the unit is subject to 40 C.F.R. Part 75;
  - (b) By the best available data reported to the cabinet for the unit if the unit is not otherwise subject to 40 C.F.R. Part 75; or
  - (c) By the best available data obtained by the cabinet.
- (7) For CAIR NOx Ozone Season units included in the pool specified in subsection (2)(a) of this section, the cabinet shall allocate CAIR NOx Ozone Season allowances to each CAIR NOx Ozone Season unit in an amount equal to the result obtained by:
- (a) Multiplying the total amount of CAIR NOx Ozone Season allowances specified in subsection (2)(a) of this section by the baseline heat input for each unit or the heat input established under subsection (3)(c) of this section;
  - (b) Dividing by the total amount of baseline heat input and the heat input established under subsection (3)(c) of this section for all applicable CAIR NOx Ozone Season units; and
  - (c) Rounding to the nearest whole CAIR NOx Ozone Season allowance, as appropriate.
- (8) The cabinet shall submit to the U.S. EPA the CAIR NOx Ozone Season allowances to be allocated and sold from the pools specified in subsection (2) of this section in a format prescribed by the U.S. EPA by:
- (a) October 31, 2006, for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014;
  - (b) October 31, 2009, for the control period 2015; and
  - (c) October 31 of each year thereafter, for the control period in the sixth year after the year of the applicable deadline for submission.

#### Section 4. Sale of CAIR NOx Allowances by the Commonwealth of Kentucky.

- (1) The Commonwealth of Kentucky shall establish an account pursuant to 40 C.F.R. 96.351(b) for the purpose of selling the CAIR NOx Ozone Season allowances in the pool specified in Section 3(2)(b) of this administrative regulation.
- (2) The proceeds from the sale of the CAIR NOx Ozone Season allowances shall be deposited in the general fund of the Commonwealth of Kentucky. (33 Ky.R. 1018; 1614; 1799; eff. 2-2-2007; 3036; 4159; eff. 6-13-2007; Crt eff. 7-30-2018.)